

43358
EB

SERVICE DATE – NOVEMBER 14, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1071

STEWARTSTOWN RAILROAD COMPANY—ADVERSE ABANDONMENT—IN YORK
COUNTY, PA.

Digest:¹ The Board is granting the request by the Estate of George M. Hart (joined by Stewartstown Railroad Company) to dismiss the Estate's adverse abandonment application and to vacate the November 16, 2012 decision granting the application, due to settlement of the parties' dispute. In addition, as a result, Stewartstown Railroad Company's petition to reopen and stay the November 16 decision is denied as moot, and the offer of financial assistance process is terminated.

Decided: November 13, 2013

By decision and certificate of interim trail use or abandonment served on November 16, 2012 (November 16 Decision), the Board, with Vice Chairman Begeman dissenting, granted the application of the Estate of George M. Hart (Estate) for third-party, or "adverse," abandonment of a 7.4-mile line of railroad owned by the Stewartstown Railroad Company (SRC) in York County, Pa. (the Line). The adverse abandonment was granted subject to environmental, historic preservation, and interim trail use conditions, as well as the possibility of offers of financial assistance (OFA) under 49 U.S.C. § 10904 to purchase the Line. The decision and certificate was scheduled to become effective on December 16, 2012, unless an OFA was filed on or before November 26, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C).

On November 20, 2012, James Riffin (Riffin) filed a petition to toll the period to submit an OFA and requested that SRC provide, among other things, the information set forth in 49 C.F.R. § 1152.27(a). In a decision served on November 30, 2012 (November 30 Decision), the Board directed SRC to provide to Riffin and the Board, by December 31, 2012, the information described under 49 C.F.R. § 1152.27(a). The Board also tolled the time period for Riffin to file an OFA until 10 days after Riffin and the Board had received the requested information, and the Board held that the effective date of the abandonment authority would be postponed until 10 days after the due date for the filing of an OFA.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Also on November 30, 2012, SRC filed a petition to reopen and stay the November 16 Decision. SRC asserted, among other things, that it was prepared to offer a certain amount in settlement of the lien held by the Estate. On December 14, 2012, the Estate filed a request to hold this proceeding in abeyance to permit the parties to explore the possibility of settlement. By decision served on December 20, 2012, the Board granted the Estate's request, holding this proceeding in abeyance and tolling all deadlines until further order of the Board. Since then, the parties have filed status reports, and the abeyance period has been extended at the parties' request several times, with the next status report due on November 25, 2013.

On September 18, 2013, the Estate filed a letter requesting that the Board dismiss the Estate's adverse abandonment application and vacate the Board's November 16 Decision. According to the Estate, the parties have reached a mutually acceptable settlement, thereby resolving the Estate's claims and rendering unnecessary the Estate's collection action against SRC. The Estate indicates that SRC joins in this request and concurs with the requested relief. No one has opposed the request.

As a result of the tolled OFA process and the December 20, 2012 abeyance decision and subsequent extensions, the November 16 decision granting the Estate's adverse abandonment application has not yet taken effect and the Board's jurisdiction over the Line remains in place. Moreover, the parties' settlement has eliminated the basis upon which the Estate sought adverse abandonment. Accordingly, the Board will grant the parties' request to dismiss the adverse abandonment application and to vacate the November 16 Decision. See Almono LP—Aban. Exemption—In Allegheny Cnty., Pa., AB 842X (STB served Jan. 28, 2004) (petition for abandonment exemption dismissed at petitioner's request after the exemption was granted but before it took effect); S. Pac. Transp. Co.—Aban. Exemption—Suman-Bryan Line in Brazos & Robertson Cntys., Tex., Docket No. AB 12 (Sub-No. 185X) (STB served June 12, 1998) (abandonment exemption vacated at carrier's request after the exemption was granted but before abandonment was consummated). Further, because the adverse abandonment application is being dismissed and the November 16 decision vacated, SRC's petition to reopen and stay the November 16 decision will be denied as moot, and the OFA process will be terminated.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Estate's adverse abandonment application is dismissed, and the decision served on November 16, 2012, is vacated.
2. SRC's petition to reopen and stay the November 16 decision is denied as moot.
3. The OFA process is terminated.
4. This proceeding is discontinued.

5. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

VICE CHAIRMAN BEGEMAN, concurring:

I strongly disagreed with the Board's November 16, 2012 decision granting the estate's adverse abandonment to allow the dissolution of the Stewartstown Railroad Company's rail line in York County, Pa. As I noted in my dissent at the time, I do not believe the rail transportation policy in 49 U.S.C. § 10101 or the statute governing the Board allows us to force a rail line abandonment over the clear objections of the rail carrier, local government officials, potential shippers, and other interested parties when there isn't an overriding and compelling public purpose to do so, which there was not in this case. Therefore, I support vacating the Board's November 16 decision because I continue to believe it was made in error, not merely because the parties have requested that it be vacated.